

1975 WL 29118 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 3, 1975

***1 Re: Civil Commitment Law Professional Fees for Attorneys and Physicians**

Honorable Arnold S. Goodstein
Senator
Charleston and Georgetown Counties
Post Office Box 7507
North Charleston, South Carolina 29405

Honorable T. Dewey Wise
Senator
Charleston and Georgetown Counties
Pose Office Box 443
Charleston, South Carolina 29401

Dear Sirs:

Your letters of recent date addressed to the Attorney General concerning the fees paid to attorneys and physicians in civil commitment hearings have been referred to me for consideration and reply.

There was appropriated to the Office of Attorney General for fiscal year 1974-75 the sum of \$300,000 for implementation of Act No. 1158 of 1974 (Civil Commitment Law), and this amount was mandated to be expended in coordination with the South Carolina Association of Probate Judges, the State Court Administrator, and the South Carolina Department of Mental Health, with the approval of the Attorney General. From this appropriation we also had to expend money for clerical help in this Office and for the salaries of three young attorneys who had to do some of the very basic work to implement this rather extensive change in the civil commitment law.

A Fee Committee was set up as mandated by the statute, and in addition to the representatives from this Office, the representatives from the South Carolina Department of Mental Health were Dr. Raymond E. Ackerman, Deputy Commissioner; Mr. Ted Shelton; Mr. Jim Reeves, Deputy Commissioner; Mr. Larry Propes, Counsel; and from the South Carolina Association of Probate Judges we had Judge J. Hewlette Wasson of Laurens, Judge Harry E. Dawkins of Orangeburg, and Judge Ralph W. Drake of Greenville, and, of course, Mr. William Dallis, Director of Court Administration. Representatives of this Office were Mr. Ed Evans, Mr. Harry Burchstead, Jr., Mr. Lincoln C. Jenkins, III, all at that time Staff Attorneys, and myself.

The Fee Committee held a series of meetings in which we had to decide and determine the availability of the appropriation to cover all of the hearings at the initial trial stage and to cover the costs thereof, including the attorney's fee, fees of guardians ad litem, the fee of the hearing examiners, which include not only medical doctors, but psychologists and psychiatrists, as well as qualified social workers and counselors, and the cost of the court reporter. We also had to consider in addition to the normal type commitment procedure, that is the emergency and the judicial, the procedures involved in general sessions court when an individual is sent to a state hospital for observation on the question of competency to stand trial. Included in the overall problem was trying to determine the approximate cost if certain fee levels were established, including appellate costs.

The Fee Committee was not unmindful of the fact that physicians were being paid at a higher rate than attorneys; however, the Committee did have to consider that in certain rural areas of the State there was a shortage of doctors who were willing or available to perform emergency commitment examinations as well as examinations for the purpose of court testimony. The Committee was also aware of the fact that pursuant to the Defense of Indigents Act statutory fees for representation of an indigent on a per hour basis out-of-court and a per hour basis in-court had been established. It was ultimately the consensus of the majority of the Committee that until the General Assembly increased the per hour compensation for appointed counsel pursuant to the Defense of Indigents Act, we should not exceed the same rate under the civil commitment law in a procedure that is somewhat less complicated than a criminal trial.

*2 In addition to the deliberations of the Fee Committee, we wrote and obtained from the various professional groups involved input, information and their observations; and these groups included the psychologists, the nurses the physicians, etc. Insofar as the legal profession was concerned, we requested direct input and appointment of a committee from the then existing South Carolina Bar Association and the South Carolina State Bar. We received no response from the President of the South Carolina State Bar. However, Mr. deRosset Myers, President of the South Carolina Bar Association, did appoint one member to look into this matter, and that was Probate Judge Ray Hinnant of Richland County. My point is that I feel that the Fee Committee contacted all professional groups and requested, but did not obtain in all instances, any comment or input.

We also had the difficult problem of dealing with an entirely new law that had no past statistical information upon which we could draw which would give any insight into the proposed number of commitments permitted by the new statutes, as all of the old commitment procedures had been repealed. We have now experienced, since the act became effective on January 5, 1975, approximately eight (8) months under the new commitment procedures, and, more importantly, we now have some statistical information which is being formulated to see what the average case is costing and who is getting the money, etc. The fiscal year ends as of June 30; however, under the mandate in the general appropriation bill, the books were not closed until August 31, so that all outstanding bills and claims could be paid. Our clerks who keep our books on vouchers submitted and paid under this appropriation have already been instructed to run statistical information as to number of commitments, costs as to physicians, psychologists, psychiatrists, court reporters, etc., and as soon as this information is available, some time during the month of September, we shall then be in a better position to judge if the initial appropriation was sufficient to accomplish the purpose for which it was intended. We will then be in a position to consider increasing or if necessary decreasing some of the fees which have been approved through the Fee Committee and the Attorney General.

In any event, as soon as the analysis is received, it is the intention of this Office that a meeting of the Fee Committee will be called to discuss the overall fee structure.

We appreciate your writing this Office concerning this matter, and if the foregoing does not satisfactorily answer any question you may have concerning the establishing of professional fees, kindly let me know at your earliest convenience.

Very truly yours,

Raymond G. Halford
Assistant Attorney General

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